HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1251 (S/S) year 2003

Yagendra Singh Bisht

Versus

State of Uttaranchal & others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 20.10.2003

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL.
Writ Petition No. 1251 (S/S) of 2003

Court No. 6
Date : 20th October, 2003

Yagendra Singh Bisht
S/o Sri Chhatra Singh Bisht
R/o Village Chorda, Patwari Circle Srikot
Tehsil Karanprayag, District Chomoli --------- Petitioner

Vs.

1. State of Uttaranchal through
Secretary, Education Uttaranchal
Dehradun
2. Additional Director of Education
Uttaranchal, Camp of Dehradun
3. Principal
Government Inter College
Nandprayag
District Chamoli ------- Respondents

Hon'ble Rajesh Tandon, J.

Heard Sri R.P. Nautiyal learned counsel for the petitioner and the standing counsel for the State of Uttaranchal. Botht he parties have agreed that the writ petition may be disposed of finally.

The petitioner has filed the present writ petition challenging the order dated 01.10.2003 Annexure – 1 to this writ petition passed by Additional Director of Education, Uttaranchal, Camp of Dehradun, by which the petitioner has been transferred from Government Inter College, Nandprayag, District Chamoli to Government Inter College, Galuddhar, District Tehri, Garhawal.

Brief facts giving rise to the writ petition are that the petitioner has been working on the post of Lecturer (Physics) in Government Inter College, Nandprayag, District Chamoli in the pay scale of Rs. 6,500/- - 10,500/- and during his tenure at said place, there is no complaint against the petitioner regarding his working as a teacher.

The petitioner has alleged that all of a sudden on 01.10.2003 the Additional Director of Education, Uttaranchal, Camp of Dehradun passed an order by which the petitioner has been transferred from Government Inter College, Nandprayag, District Chamoli to Government Inter College, Galuddhar, District Tehri, Garhwal. A perusal of the transfer order dated 01.10.2003 shows that the petitioner has been transferred in the public interest on the administrative exigency.

Heard learned counsel for both the parties Standing Counsel is represented on behalf of the respondents. After hearing the rival submissions following three points arise for consideration" –

1. Whether interference is required in the transfer matter.
2. Whether the transfer order has been passed due to political influence.
3. Whether the representation made by the petitioner requires consideration.
4. Whether the transfer order dated 01.10.2003 has been passed in the mid term session and its effect.

1. Whether interfere is required in the transfer matters.

The petitioner is a Lecturer (Physics) in Government Inter College, Nandprayag, District Chamoli.

The petitioner has placed reliance on the guidelines dated 26.04.2003 relating to the transfer of the teachers framed by the State Government.

According to the petitioner since he has been elected as a District Secretary (Zila Mantri) of the organization, therefore, the transfer order passed in the middle of the session is wholly unwarranted. Reliance was placed on clause no. 3 (C) of guidelines dated 26.04.2002 which provides that the elected President / Secretary of an organization of State or District level shall not be transferred up to the period of two years from the date of election. Clause No. 3(C) is quoted below:-

> "The elected President/Secretary of an organization of State or District level, be not transferred up to two years from the date of election"

The petitioner has also referred clause 3 (G) of guidelines dated 26.04.2002 which provides that the husband and wife should he posted at one place. Clause 3 (G) is quoted below:-

> *"Guidelines dated 26.04.2002 that the husband and wife should be posted nearby as much as possible."*

Suffice is to say that the guidelines are only the executive directions.

In view of the decision reported in AIR 1991 Supreme Court 532 Mrs. Shilpi Bose and others Vs. State of Bihar and others no interference is required. Article 226 of the Constitution of India the observations of the Apex Court are quoted below:-

> *"In the opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative*

reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conductive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

2. Whether the transfer order has been passed due to political influence.

Coming to the second submission of the petitioner that the transfer order has been passed at the behest of the Education Minister. Perusal of the transfer order dated 01.10.2003 shows that the copy of the order dated 26.04.2002 has been forwarded as under:-

प्रदेश / जिला स्तर के मान्यता प्राप्त संगठन के निर्वाचित अध्यक्ष / मंत्री को चुनाव की तिथि से दो वर्ष तक अपने विद्यालय से स्थानान्तरित न किया जाय।

पति–पत्नी को यथासम्भव निकटवर्ती स्थान पर तैनात किया जाय।

It appears that the Education Minister has addressed two letters dated 17.09.2003 and 27.09.2003 to Additional Director of Education, Uttaranchal, Camp at Dehradun and in compliance of the aforesaid letter of the transfer order has been passed. The order of transfer has been endorsed to the Education Minister as well.

Although the transfer order shows that it has been passed in administrative exigency and in the public interest but in view of the endorsement made at Sl. No. 6 to Education Minister in compliance of the letter dated 17.09.203 and 27.09.2003, the transfer on administrative exigency or public interest is not relevant.

It has been held in (1997) 2 UPLBEC 925 in Smt. Gyatri Devi Vs. State of U.P. & others that the order of transfer passed on the political basis cannot be allowed to stand in view of the judgment of the Allahabad High Court reported in as under:-

> *23. "In my opinion transfers and posting should ordinarily be left to the senior civil servants (except in rare cases where the Minister may interfere). For instance, the postings of inspectors and sub-inspectors of police, and even of higher officers, should be left in the hands of the concerned senior police officer, and should be not be done by, or at the instance of Ministers or politicians, and such postings should never be done on the basis of caste or political affiliations or monetary consideration.*
>
> *24. Similarly, transfers and postings of other Government servants should be solely in the hands of senior officers of the service, concerned and should not be at the behest of, or on the dictates of politicians.*
>
> *25. In Pawan Kumar Srivastava Vs. U.P. State Electricity Board, 1995(1) UPLBEC 414, this Court quashed a transfer order passed on the desire of the Chief Minister. In this case, the petitioner was Chemist, Grade-II in the service of the U.P. Government, and was also General Secretary of the U.P. Vidyut Mazdur Sangh which is affiliatedto the Bhartiya Mazdur Sangh. The City President of the Bahujan Samaj Party wrote a letter to the Chief Minister that the petitioner was harassing members of the backward class. The Secretary to the Chief Minister then wrote a letter to the Chairman, U.P. State Electricity Board, conveying the request of the Chief Minister to transfer the petitioner, and on this letter the petitioner was transferred. Allowing the writ petition of the petitioner Hon'ble Alok Chakrabarti, J. in an elaborate and well considered decision observed "I am convinced that the petitioner's transfer was on political considerations and complaints an not at all was considered from the angel of administrative exigency or public interest."*

26. His Lordship relied on the decision of the Court in **Sheo Kumar Sharma Vs. Basic Shiksha Adhikari 1991 (1) UPLBEC 690,** where it was observed:-

> *"It is regretted that a Minister should pass a transfer order which function is to be discharged by the competent authority in the Department. If anything adverse to the conduct of the incumbent comes to the conduct of the incumbent comes to the knowledge of a Vidhayak or some other public representative then he may forward it to the competent authority requesting him to consider the same and do the needful in the matter, but interference by directing transfer straightway is not compatible to the principles of law by which a country having a democratic set-up is to be governed. All the persons in position should know that this is not the government of the men however high position they may occupany but is the Government of laws."*

27. His Lordship also relied on the decision of a Division Bench of this Court in **Pradeep Kumar Agarwal Vs. Director, Local Bodies 1994(1) UPLBEC 156,** which observed:-

> *"Transfers are to be done only in administrative exigencies and in public interest, but in the instant case the letter written by the aforesaid M.P. addressed to the Minister for Urban Development bearing endorsement of the officers of the Government indicates that the instant transfer has neither been made in administrative exigency nor in public interest. It is not only a matter of surprise but highly objectionable that bureaucrats are dancing at the tubes of such letters ignoring the well settled norms for transfer."*

28. His Lordship distinguished the decision of the **Supreme Court in Shilpi Bose Vs. State of Bihar, AIR 1991, SC, 532,** on the ground that in that decision of Supreme Court had observed that:-

"the Court should not interfere with a transfer order which is made in public interest and for administrative reason unless the transfer order is made in violation of any mandatory statutory rule or on the ground of mala fide."

29. His Lordship held that a transfer order passed on political considerations is mala fide.

30. In my opinion, the above observation Shilpi Bose's case (supra) itself make it clear that the Court can interfere with a transfer which was not passed for administrative reasons and in the public interest.

31. In Union of India V. S.L. Abbay, 1993(4) SCC 357, Rajendra Roy Vs. Union of India AIR 1993 SC 1236, Union of India Vs. M.P. Thomas, AIR 1993 SC 1605 etc. The Supreme Court observed that the Court should not interfere with transfer order unless there is violation of some statutory rule or mala fides.

32. In **N.K. Singh V. Union of India, 1994 (6) SCC 98,** the Supreme Court observed *'Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers.'*

33. The above decision make it clear that transfer orders can be set aside on three grounds:-

1) Violation of a statutory rule or
2) Mala fidies, or
3) Infraction of any professed norma or or principle governing transfers.

34. In my opinion, the impugned order is liable to be set aside on the second and third ground mentioned above.

35. The meaning of mala fides in relation to a transfer order has been explained by the **Supreme Court in B. Varaha Rao V. State of Karnatak, 1986, (4) SCC 131,** in the following words:-

"This power (of transfer) must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to

mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfer, cannot but he held as mala fide. A transfer is mala fide when it is not made for the professed purpose such as in the normal course or in public and administrative interest or in the exigencies of service. It is a basic principle of the rule of law and gtood administration that even administrative actions should be just and fair."

36. In view of the above observation it is obvious that the impugned order was passed mala fide.

37. In the same decision the Supreme Court also observed:-

"One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation it disrupts the education of his children and leads to numerous other complication and problems and results in hardship and demoralization. It therefore follows that the policy of transfer should be reasonable and fair, and should apply to everybody equally."

38. In my opinion, the impugned order is also illegal because it is in breach of the basic norm or principle governing transfers that such transfers should be on administrative grounds, and not at the behest of politicians. In my opinion, a transfer order passed in breach of the settled norms of administration is arbitrary and hence violative of Article 16 of the Constitution."

It has been held by the Apex Court **Director of School Education, Madrass and others Vs. O. karuppa Thevan and another 1994 Supp (2) Supreme Court Cases 666** that the order should not be passed in the academic year. The Apex Court has held as under:-

"However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that

there was such urgency in the present case that the employee could not have been; accommodate till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

However, in **Deepa Vashishtha Vs. State of U.P. and others 1996 A.W.C. Page 269 reliance has been placed on the Judgment of the Apex Court in Home Secretary U.T. Chandigarh V Darshjit Singh Grewal and others, JT 1993 (4) SC 387.** Their Lordships have ruled that policy guidelines are the executive directions. The observations are quoted below:-

"However, in a recent pronouncement of the Apex Court rendered in Home Secretary, U.T. Chandigarh Vs. Darshjir Singh Grewaql and others, JT 1993 (4) SC 387, their Lordships have ruled that policy guidelines are relatable to the executive power of the administration, and having enunciated a policy of general application and having communicated it to all concerned, the administration is bound by it. It can, no doubt change the policy but until that is done, it is bound to adhere to it.

Taking into account the human consideration and social needs, the aforesaid guidelines have been framed and the basic idea behind it is that whole set up of the family may not be disturbed notwithstanding the fact that said guidelines are not in imperative form. Thus, it needs consideration with positive approach till the policy is not changed or amended in view of the decision in Home Secretary, U.T. Chandigarh's case (supra) JT 1993 (4) SC 387 and if it is not possible to keep husband and wife at one place, cogent reasons in such cases are expected to be assigned so that transferee husband or wife, as the case may be able to know the reasons. If any policy has been framed and still operative, the executive actions are expected to be in conformity with the same and not to negate it. In other words, in the grab of public interest or administrative exigencies, it is not at the whims of the authority to disturb the family by transferring one of the

husband and wife to a different place since the guidelines are not in imperative form or they have no force of law. If the administrative exigencies or public interest so requires, certainly husband and wife may transferred to different places but only in exceptional cases, i.e., rarest of rare cases, for which no illustration can be given."

3. **Whether the representation made by the petitioner requires consideration.**

4. **Whether the transfer order dated 01.10.2003 has been passed in the mid term session and its effect.**

Coming to the third and fourth submissions regarding representation and mid-term transfer it may be pointed out that the petitioner in his writ petition has separately stated and challenged the transfer order by stating to the following effects:-

"6. That it is also stated here that the petitioner is duly elected District Secretary (Zila Mantri) of Rajkiya Shikshk Snagh, Uttaranchal, District Chamoli, which is recognized organization of State of Uttaranchal. The clause no. 3(C) of guidelines dt. 26.04.2002 clearly says that the elected President/Secretary of an organization of State of District level, be not transferred up to two years from the date of election, but in the present case, the election of organization was held in the month of September, 2002 and the petitioner, who is Secretary of organization, is being transferred within two years and as much the impugned transfer order is against the transfer policy of the State Government.

7. That the clause no. 3 (G) of guidelines dt. 26.04.2002 further says that the husband and wife should be posted nearby as much as possible, but in the present case, the wife of petitioner Smt. Rekha Bisht is posted as Assistant Primary Teacher in Primary School Mangroli, Post Office Nandprayag, District Chamoli, which is 2 kms. From Nandprayag whereas by the impugned transfer order, the petitioner is transferred to another district. This fact also indicates that the impugned transfer order is against the transfer policy of State Government.

9. That the transfer order are passed on three grounds, first is in public interest, second is on administrative ground and third on personal request, but the impugned transfer order has been passed on the administrative ground in public interest that means the impugned order has been passed in public interest and on administrative ground too, which shows that the impugned transfer order has been passed without application of mind and as such the same is liable to be quashed by this Hon'ble Court.

10. That the impugned transfer order itself shows that it has been passed on political pressure of Education Minister, Uttarancha, Dehradun as the copy of transfer order has also been sent to Education Minister for information in compliance of his letter dt. 17.09.2003 and 27.09.2003 and as such the impugned transfer order is illegal, arbitrary and against the law.

11. That the petitioner is having two children, in which first is daughter, who is studying in class 3rd and second is son, who is studying in class 1st. Both the children of petitioner are studying in Nandprayag, District Chamoli. By the impugned order, the petitioner has been transferred to Galuddhar, District Tehri Garhwal, which is more than 250 kms from the place of posting and it will not be possible for the petitioner to look after their children from District Tehri Garhwal."

The respondents, therefore, are directed to consider the representation of the petitioner in the light of the averments made in the writ petition as well as observations made above.

However, the order dated 01.10.2003 shall remain in abeyance till the representation of the petitioner is disposed of.

Consequently with the aforesaid observations the writ petition is disposed of.

(Rajesh Tandon, J.)

20.10.2003
ASWAL